RHB BANK BHD

v.

TREASURE ISLAND RESORTS SDN BHD & ORS

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
ABDUL KADIR SULAIMAN JCA
ALAUDDIN MOHD SHERIFF JCA
[CIVIL APPEAL NO: W-02-46-1997]
8 NOVEMBER 2002

CIVIL PROCEDURE: *Appeal - Interference by appellate court - Decision by registrar - Whether based on concurrent findings of fact - Whether exceptional circumstances existed to justify interference*

Upon the dissolution of an injunction earlier obtained by the respondents, the registrar conducted an inquiry as to damages for any loss suffered by the appellants during its subsistence. No award was made and the appellants appealed, but the judge affirmed the registrar's decision. Dissatisfied, the appellants appealed to this court.

Held:
Per Gopal Sri Ram JCA

[1] This was an appeal against concurrent findings of fact. The registrar had the benefit of seeing and hearing the witnesses. Once the judge affirmed the said decision, this court would not interfere in absence of any exceptional circumstances. (p 775 e-f)

[2] The proceedings before the registrar were in the nature of a trial which *viva voce* evidence was led. Therefore, with reference to O. 56 r. 1(3A) of the Rules of the High Court 1980, such matters fell outside cases as those tried on a summons for judgment under O. 14. (p 775 g)

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Setelah pembubaran suatu injunksi yang didapatkan sebelum ini oleh pihak responden, pendaftar telah mengadakan satu siasatan berkenaan pampasan untuk kerugian yang dialami oleh perayu semasa kewujudannya. Tiada award dibuat dan perayu telah membuat rayuan, tetapi hakim telah mengesahkan keputusan pendaftar. Berasa tidak puas hati, perayu membuat rayuan ke mahkamah ini.

Diputuskan:
Oleh Gopal Sri Ram HMR

[1] Ini merupakan suatu rayuan terhadap dapatan serentak fakta. Pendaftar telah mendapat manfaat untuk melihat dan mendengar saksi-saksi. Bilamana hakim mengesahkan keputusan tersebut, mahkamah ini tidak akan campurtangan dengan ketiadaan apa-apa sebab luar biasa.

[2] Prosiding dihadapan pendaftar adalah dalam bentuk suatu perbicaraan di mana keterangan *viva voce* telah dihadapkan. Maka, merujuk kepada A. 56 k. 1(3A) Kaedah-kaedah Mahkamah Tinggi 1980, perkara tersebut berada diluar kes-kes seperti yang dibicarakan dalam saman dalam keputusan di bawah A. 14.

Rayuan ditolak.]

Case(s) referred to:
DoCarmo v. Ford Excavation [1981] 1 NSWLR 409 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 14, O. 56 r. 1(3A)

For the appellant - Asbir Kaur Sangha (Anit Kaur Radhwa); M/s Asbir, Hira Singh & Co
For the 1st respondent - Ramdas Tikamdas; M/s Siva, Ram & Assoc
For the 2nd, 3rd & 4th respondents - Dato' Lakhbir Singh Chahl; M/s Lakhbir Singh Chahl & Co

[Appeal from High Court, Kuala Lumpur; Suit No: D1-22-165-1988]

Reported by M Maheswaran

JUDGMENT
(Oral)

Gopal Sri Ram JCA delivering judgment of the court:
This is the judgment of the court.

On 16 August 1988 the 1st, 2nd, 3rd and 4th respondents to this appeal obtained an injunction from the High Court against the appellant as well as the receivers and managers of a company known as Cocoa Processors Sdn. Bhd. restraining them from selling or dealing with or parting with any or all of the assets of Cocoa Processors Sdn. Bhd. until the final determination of the principal suit.

There was a further injunction which restrained the defendants in the action from issuing any prospectus or releasing any information pertaining to the trade and production methods relating to Cocoa Processors Sdn. Bhd. or allowing any such inspection of its assets to any party or person without express order of the court.

On 23 February 1989 that injunction was dissolved. An order was also made on the assessment of damages for any loss that might have been occasioned in consequence of the injunction. Pursuant to that order, an inquiry as to damages was conducted by the registrar. Oral evidence was heard in the sense that the deponents of the affidavits were cross-examined. After a long hearing, the registrar came to the conclusion that no injury had been occasioned to the appellant and declined to award any damages. In particular, the registrar expressed her dissatisfaction as to the quality of evidence led by the appellant. She found some of the evidence proffered by the appellant to be suspect.

The appellant being dissatisfied, appealed to the judge who, at the conclusion of the arguments, affirmed the registrar's decision and dismissed the appeal before him. In his written judgment, he expressed agreement with the registrar and affirmed her findings. The appellant now appeals to us.

In the circumstances adumbrated, the appellant begins in this court with a serious disadvantage. This is, in essence, an appeal against what are concurrent findings of fact. We have on previous occasions made the position of this court amply clear in respect of an appeal such as this save in exceptional cases, this court will not interfere with concurrent findings of fact. The registrar had the benefit of seeing and hearing the witnesses and once the judge reviewing her decision affirmed her findings, it is not open for this court to reopen those findings.

We may add that this is not a case where the judge was merely rehearing a summons by the registrar. In the present case, the proceedings before the registrar were in the nature of a trial in which *viva voce* evidence was led. The present case therefore falls outside cases such as those tried on a summons for judgment under O. 14. That is the result of O. 56 r. 1(3A). See also, *DoCarmo v. Ford Excavation* [1981] 1 NSWLR 409.

For these reasons the appeal is without merit. It is dismissed. The orders of the registrar and judge are affirmed. The respondents No. 1 and respondents No. 2 – 4 will have their costs on separate bills with separate items of getting up, profit costs and out of pockets.